



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 177

Docket No. USCG-2013-0216

RIN 1625- AC01

Regulated Navigation Areas; Bars along the Coasts of Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending its regulations by removing the wave height and surface current provisions and regulated boating areas for bar crossing locations along the coasts of Oregon and Washington because they conflict with more recently promulgated wave height provisions and regulated boating areas for the same bar crossings. This amendment is necessary in order to remove confusion as to which safety requirements apply to recreational vessels, uninspected passenger vessels, small passenger vessels, and commercial fishing vessels when operating within the regulated navigation areas.

DATES: This interim rule is effective [INSERT DATE 30 days after publication in the Federal Register]. Comments and

related material must reach the Docket Management Facility on or before [INSERT DATE 60 days after publication in the Federal Register.]

ADDRESSES: You may submit comments identified by docket number USCG-2013-0216 using any one of the following methods:

- (1) Federal eRulemaking

Portal:<http://www.regulations.gov>.

- (2) Fax: 202-493-2251.

- (3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- (4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, e-mail or call Mr. Burt Lahn, U.S. Coast Guard Office of Navigation Standards (CG-NAV-3), e-mail Burt.A.Lahn@uscg.mil, telephone 202-372-1526. If you have

questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments:

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-0216), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comments online, go to <http://www.regulations.gov> and insert "USCG-2013-0216" in the "Search" box. Locate this document in the search results, click on "Submit a Comment," and follow the instructions to submit your comments. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this rule based on your comments.

B. Viewing comments and documents:

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert "USCG-2013-0216" in the "Search" box and locate this document in the search results. Open the docket folder and use the filters on the left side of the page to view public comments or other types of documents. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

D. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

II. Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
NTSB	National Transportation Safety Board
RNA	Regulated Navigation Area
U.S.C.	United States Code
§	Section

III. Regulatory History & Information

The bars along the coasts of Oregon and Washington are a maritime operating environment unique to the Pacific Northwest. The bars can and very often do become extremely hazardous for maritime traffic. On February 12, 2009, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (74 FR 7022) that proposed to establish Regulated Navigation Areas (RNAs) in 33 CFR 165.1325 for bars along the coasts of Oregon and Washington. The proposals in the NPRM were designed to help ensure the safety of persons and vessels operating on or in the

vicinity of the bars. The Coast Guard subsequently published a final rule in the Federal Register on November 17, 2009 (74 FR 59098), adopting most of the NPRM's proposals.

Certain provisions in the final rule superseded other existing regulatory provisions. Specifically, 33 CFR 165.1325(a) sets forth the specific locations for the RNAs that cover the bars along the Oregon and Washington coasts, and supersedes the regulated boating areas in 33 CFR 177.08. Additionally, 33 CFR 165.1325(b)(13) defines the term unsafe condition to include certain wave height conditions, and supersedes the unsafe wave height formula and surface current provisions in 33 CFR 177.07(f). The purpose of this interim rule is to remove those superseded provisions from the CFR.

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because that procedure would be contrary to the public interest. Failure to amend 33 CFR part 177 will result in confusion as to which safety requirements apply to recreational and small commercial vessels when operating in certain bar crossing locations along the coasts of Oregon and Washington. This rulemaking is necessary to remove the conflicting provisions under 33 CFR 177.07(f) and 177.08 that have been superseded by 33 CFR 165.1325 and to eliminate confusion regarding which requirements apply specific to the bars along the coasts of Oregon and Washington. Delaying this action in order to publish an NPRM would be contrary to the public interest, as further delay would perpetuate confusion.

In addition, as discussed in the aforementioned 2009 NPRM, the Coast Guard determined that the wave height and surface current provisions in 33 CFR 177.07(f), and the regulated boating areas in 33 CFR 177.08, did not provide a sufficient measure of safety for persons and vessels operating in those areas. In addition, multiple Coast Guard and National Transportation Safety Board (NTSB) casualty investigations indicated a need for additional regulations to mitigate the risks associated with the bars and to

enhance the safety of the persons and vessels operating on and in the bars' vicinity. Thus, continuing to keep these regulations in effect while publishing an NPRM would also be contrary to the public interest in making boating operations as safe as possible.

IV. Basis and Purpose

Under 46 U.S.C. 4302, the Coast Guard is authorized to establish regulations to promulgate minimum safety standards and procedures for recreational vessels. Under 46 U.S.C. 4105(a), uninspected passenger vessels are also subject to Chapter 43 of Title 46, U.S. Code.

This rulemaking is necessary in order to remove the wave height and surface current provisions under 33 CFR 177.07(f) and the geographic coordinates in 33 CFR 177.08 that have been superseded by 33 CFR 165.1325, to eliminate confusion regarding which provisions apply specific to the bars along the coasts of Oregon and Washington. The regulations in 33 CFR 165.1325 establish clear procedures for restricting and/or closing the bars as well as mandating additional safety requirements for recreational and uninspected commercial vessels operating on or in the vicinity of the bars, when certain conditions exist. The RNAs established in 33 CFR 165.1325 help to expedite bar restrictions and closures and include a mariner notification

process that helps keep vessels away from hazardous bars. The RNAs also require the use and/or making ready of safety equipment, as well as additional reporting requirements when certain conditions exist, which help safeguard the persons and vessels that operate on or in the vicinity of hazardous bars.

V. Discussion of the Interim Rule

Certain provisions of 33 CFR part 177, governing maritime traffic operating on and in the vicinity of the bars along the coasts of Oregon and Washington, provide insufficient safety measures for the persons and vessels that operate in those areas. As discussed in the February 12, 2009 NPRM (74 FR 7022), multiple Coast Guard and NTSB casualty investigations indicated a need for additional regulations to mitigate the risks associated with the bars and to enhance the safety of the persons and vessels operating on and in the bars' vicinity. To fulfill this need, in 2009, the Coast Guard established the RNAs in 33 CFR 165.1325.

The provisions in 33 CFR 165.1325 establish an increased measure of safety and supersede the existing provisions in 33 CFR 177.07(f) and 177.08. Accordingly, the Coast Guard, through this interim rule, removes the wave height provisions in 33 CFR 177.07(f)(1) and (2), the

surface current provision in 33 CFR 177.07(f)(3), and the regulated boating areas in 33 CFR 177.08.

VI. Regulatory Analyses

We developed this interim rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim rule has not been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the interim rule has not been reviewed by the Office of Management and Budget.

The Coast Guard does not expect any economic impact as a result of this interim rule because the rule is only

removing two criteria for unsafe conditions in 33 CFR part 177 that have been superseded by 33 CFR 165.1325.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

The Coast Guard does not expect any economic impact as a result of this interim rule because the rule is only removing certain provisions of 33 CFR part 177 that have been superseded by 33 CFR 165.1325. The Coast Guard anticipates this interim rule will have no impacts, hence, no costs to the affected population, including any small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and

that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Burt Lahn, U.S. Coast Guard Office of Navigation Standards (CG-NAV-3), e-mail Burt.A.Lahn@uscg.mil, telephone 202-372-1526. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

Under 46 U.S.C. 4306, Federal regulations promulgated under the authority of 46 U.S.C. 4302 preempt State law unless the State law is identical to a Federal regulation or a State is specifically provided an exemption to those regulations, or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State. As noted above, this interim rule simply removes superseded regulations regarding wave height and surface current provisions, and certain regulated boating areas from 33 CFR part 177. Additionally, there are no existing State laws that are identical to these Federal regulations, nor have the States been provided an exemption to those regulations or permitted to regulate marine safety articles. Therefore, the rule is consistent

with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process.

Therefore, the Coast Guard invites affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this interim rule. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document: (1) the extent of the Coast Guard's consultation with State and local officials who submit comments to this proposed rule; (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon; and (3) a statement of the extent to which the concerns of State and local officials have been met. We will also report to the Office

of Management and Budget any written communications with the States.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. This rule will not result in such expenditure.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on

the human environment. This rule is categorically excluded, under section 2.B.2, Figure 2-1, paragraph 34(g), of the Instruction because it involves regulations establishing, disestablishing, or changing RNAs. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 177

Marine safety

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 177 as follows:

Title 33—Navigation and Navigable Waters

PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS

1. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 4302, 4311; Pub. L. 103-206, 107 Stat. 2439.

§ 177.04 [Amended]

2. In § 177.04(a), remove the text “§ 177.07(g)” and add, in its place, the text “§ 177.07(f)”.

§ 177.07 [Amended]

3. In § 177.07, remove paragraph (f) and redesignate paragraph (g) as new paragraph (f).

§ 177.08 [Removed]

4. Remove § 177.08.

§ 177.09 [Redesignated as § 177.08]

5. Redesignate § 177.09 as § 177.08.

Dated: June 28, 2013

DANA A. GOWARD
Director, Marine Transportation Systems
U.S. Coast Guard

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